



July 6, 1999

Ms. Susan M. Cory  
General Counsel  
Texas Workers' Compensation Commission  
Southfield Building MS-4D  
4000 South IH-35  
Austin, Texas 78704-7491

OR99-1865

Dear Ms. Cory:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125411.

The Texas Workers' Compensation Commission (the "commission") received a request for

1. Copies of material currently being used for the audit selection process to determine what doctors on the designated list will be audited, and
2. The actual software program used by the TWCC to assist with the audit selection process.

You contend that the requested information is excepted from public disclosure pursuant to sections 552.108, 552.110 and 552.111 of the Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

At the outset we note that you have not submitted a portion of the requested information. However, you have asserted that the requested software program is excepted by section 552.110, and express concern that "release of the information could constitute a security risk to the methods and processes used by the Commission in performing audits." *See generally* Open Records Decision No. 581 (1990). Since you have not submitted the requested "software program," we will not consider the applicability of section 552.110 for the requested information.

We will now consider your arguments against disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure inter-agency or intra-agency communications consisting of advice, recommendations, opinions, and other material

reflecting the *deliberative or policymaking processes* of the governmental body.<sup>1</sup> See *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref’d n.r.e.) (emphasis added).

Based on your representation, the commission is authorized to investigate and audit health care providers. Labor Code § 413.013. In pertinent part, section 413.013 of the Labor Code reads as follows:

The commission by rule shall establish:

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(2) a program for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments or services, including the authorization of prospective, concurrent, or retrospective review under the medical policies of the commission to ensure that the medical policies or guidelines are not exceeded;

(3) a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the commission.

As for the submitted information, it appears that the audit plan and related documentation were created with criteria, factors, and objectives selected and “compiled by the Commission, pursuant to the Texas Workers’ Compensation Act.” You contend that “the information requested is the result of, and reflects, internal deliberations within the Commission and should be withheld from public disclosure.” You further assert that “[i]f publicly disclosed, this information would reveal decision points in the Commission’s deliberative processes during audits,” and the commission audit programs are “statutorily authorized to disclose overcharging by health care providers.” Based on the facts presented, we believe that most of the requested information, consisting of audit plans and related documentation, consists of “material reflecting the deliberative or policymaking processes” of the commission. Therefore, we have tagged the documents which may be withheld pursuant to section 552.111.

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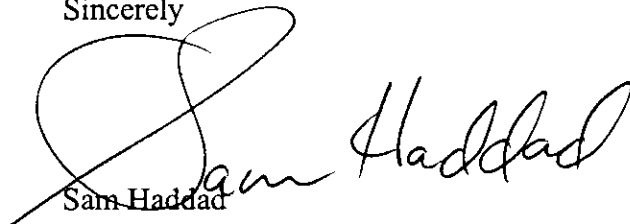
<sup>1</sup>Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 (1993).

We next consider whether the remaining information, which may not be withheld under section 552.111, is protected from required disclosure under section 552.108. This section excepts certain information related to law enforcement. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that "[p]ublic release of the requested information would reveal not only the methods and processes used by the Commission in performing audits and investigating practices that may violate [the Texas Workers' Compensation Act], but would also allow the subject of future audits to take steps to thwart the audit process."<sup>2</sup>

Although this exception generally applies to records of a law-enforcement agency or prosecutor, in certain circumstances, an agency that is not a law-enforcement agency may claim section 552.108. *See* Open Records Decision No. 493 (1988). However, under the facts presented, you have not demonstrated how release of this information would interfere with law enforcement. Consequently, we conclude that you may not withhold any of the requested information, not excepted by section 552.111, under section 552.108 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely



Sam Haddad  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>Section 413.043 of the Labor Code reads as follows

(a) A health care provider commits an offense if the person knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges.

(b) An offense under this section is a Class A misdemeanor.

SH/eaf

Ref.: ID# 125411

Encl. Submitted documents

cc: Mr. John D. Pringle  
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(w/o enclosures)